

COMMONWEALTH OF KENTUCKY  
BEFORE THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION  
AND TRANSMISSION SITING

In the Matter of:

ELECTRONIC APPLICATION OF BRIGHT	)	
MOUNTAIN SOLAR, LLC FOR A CERTIFICATE	)	
OF CONSTRUCTION FOR AN UP TO 80	)	
MEGAWATT MERCHANT ELECTRIC SOLAR	)	CASE NO.
GENERATING FACILITY AND RELATED	)	2023-00263
NONREGULATED TRANSMISSION LINE OF	)	
APPROXIMATELY 4 MILES IN PERRY COUNTY,	)	
KENTUCKY PURSUANT TO KRS 278.700 AND	)	
807 KAR 5:110	)	

ORDER

On February 19, 2024, Bright Mountain Solar, LLC (Bright Mountain) filed a motion for confidential treatment, pursuant to 807 KAR 5:110, Section 5, and KRS 61.878(1)(a) and (1)(c)(1), requesting that the Siting Board grant confidential protection for treatment for an indefinite period for copies of leases, including options that have been entered into in connection with the proposed solar project, that were filed in response to Siting Board Staff’s Post-Hearing Request for Information (Staff’s Post-Hearing Request), Item 5.

LEGAL STANDARD

The Siting Board is a public agency subject to Kentucky Open Records Act,<sup>1</sup> which requires that all public records “be open for inspection by any person, except as otherwise provided by KRS 61.870 to KRS 61.884.”<sup>2</sup> The exceptions to the free and open

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<sup>1</sup> KRS 61.870 through 61.884.

<sup>2</sup> KRS 61.872(1).

examination of public records should be strictly construed.<sup>3</sup> The party requesting that the materials be granted confidential protection has the burden of establishing that one of the exemptions is applicable.<sup>4</sup> KRS 61.878(1)(a) grants confidential protection of information that if disclosed would create an invasion of personal privacy.<sup>5</sup> KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure of records that are “generally recognized as confidential and proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.”

### DISCUSSION AND FINDINGS

In support of its motion, Bright Mountain, stated that the response to Staff’s Post-Hearing Request, Item 5, required Bright Mountain to provide a copy of the leases or purchase agreements that Bright Mountain has entered into in connection with the proposed facility. Bright Mountain stated that the leases contain private information of the landowner. Bright Mountain also argued that the leases and purchase agreements should be afforded confidential treatment because the documents contain propriety information regarding pricing and, if disclosed, would provide a competitive advantage to competitors.

Having considered the motion and the material at issue, the Siting Board finds that Bright Mountain’s motion should be granted, in part, and denied, in part. The Siting Board finds that the designated material contained in Bright Mountain’s leases are records that

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<sup>3</sup> KRS 61.878.

<sup>4</sup> 807 KAR 5:110, Section 5(2)(d).

<sup>5</sup> KRS 61.878(1)(a).

meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878 (1)(c)(1) and 807 KAR 5:110, Section 5.

Material terms are defined as including:

1. The lease amounts;
2. Escalation of lease payments;
3. Remedies available to the parties of the lease for nonperformance of the terms;
4. Economic terms other than lease terms and related escalations such as signing payments, crop damage calculations, construction rent amounts, extension fees, and holdover rent amounts; and
5. The structure of the lease term including the outside date for the rent commencement date.

The Siting Board further finds that the request for confidential treatment is denied for the remaining portions of the leases because they are general contract language that would not give a competitor of Bright Mountain an unfair commercial advantage. Therefore, the remaining terms do not meet the criteria for confidential treatment and are not exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:110, Section 5.

IT IS THEREFORE ORDERED that:

1. Bright Mountain's February 19, 2024 motion for confidential treatment is granted in part and denied in part.
2. Bright Mountain's motion for the material terms of leases provided in response to Siting Board Staff's Post- Hearing Request for Information, Item 5, is granted.

3. Bright Mountain motion for confidential treatment for the remaining portions of the leases is denied.

4. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for an indefinite period or until further order of this Siting Board.

5. Use of the designated material granted confidential treatment by this Order in any Siting Board proceeding shall comply with 807 KAR 5:110, Section 5.

6. Bright Mountain shall inform the Siting Board if the designated material granted confidential treatment becomes publicly available or no longer qualifies for confidential treatment.

7. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If Bright Mountain is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Siting Board shall deny the request for inspection.

8. The Siting Board shall not make the requested material for which confidential treatment was granted available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow Bright Mountain to seek a remedy afforded by law.

9. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

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KENTUCKY STATE BOARD ON ELECTRIC  
GENERATION AND TRANSMISSION SITING

*Kent Cole*

Chairman, Public Service Commission

*Off*

Vice Chairman, Public Service Commission

*May Pat Regan*

Commissioner, Public Service Commission

*by KTC  
w/permission*

*John Lyons*

Secretary, Energy and Environment Cabinet,  
or her designee

*Sydney Marteny*

Secretary, Cabinet for Economic Development,  
or his designee

ATTEST:

*Linda C. Bridwell*

Executive Director  
Public Service Commission  
*on behalf of the Kentucky State  
Board on Electric Generation  
and Transmission Siting*

ENTERED  
MAR 06 2024  
rCS  
KENTUCKY PUBLIC  
SERVICE COMMISSION

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